

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940 1941

No. 908 42

THE UNITED STATES OF AMERICA, PETITIONER

vs.

LOUIS H. PINK, SUPERINTENDENT OF INSURANCE
OF THE STATE OF NEW YORK, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF NEW YORK

PETITION FOR CERTIORARI FILED MARCH 29, 1941
CERTIORARI GRANTED MAY 5, 1941

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VS.
LOUIS H. PINK, SUPERINTENDENT OF INSURANCE
OF THE STATE OF NEW YORK, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF NEW YORK

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New York Supreme Court
APPELLATE DIVISION—FIRST DEPARTMENT

UNITED STATES OF AMERICA,

1

Plaintiff-Appellant,

—against—

LOUIS H. PINK, Superintendent of Insurance of the State of New York, and as Liquidator of the Domesticated United States Branch of the FIRST RUSSIAN INSURANCE COMPANY, ESTABLISHED IN 1827,

Defendant-Respondent,

2

VICTOR YERMALOFF, and others,

Defendants.

Statement Under Rule 234.

This action was commenced by personal service of the summons and complaint upon the Superintendent of Insurance on November 16, 1937. The defendant Louis H. Pink, Superintendent of Insurance, served his answer to the complaint on the 25th day of March, 1938. On or about the 17th day of May, 1939, the defendant Pink served upon the plaintiff a notice of motion to dismiss the complaint and for summary judgment as to said defendant, and this motion was argued at a Special Term, Part III, of the Supreme Court, New York County, on 13th day of June, 1939, before Mr. Justice Aaron J. Levy

3

Statement Under Rule 234.

The names of the original parties involved on this appeal are as above stated and there has been no change of such parties since the commencement of this action. There are numerous other parties defendant in the action, all of whom are referred to in the complaint printed herein. None of such other parties has moved to dismiss the complaint nor are any of such other parties parties to this appeal.

Notice of Appeal by United States of America.

**SUPREME COURT
OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

—against—

LOUIS H. PINK, Superintendent of Insurance of the State of New York, and as Liquidator of the Domesticated United States Branch of the FIRST RUSSIAN INSURANCE COMPANY, ESTABLISHED IN 1827, and others,

Defendants.

Sir:

Please take notice that the United States of America, the plaintiff above named, appeals to the Appellate Division of the Supreme Court, First Department, from the order of this Court dated and entered in the office of the Clerk of the County of New York in the above entitled action on the 29th day of June, 1939, and from the judgment in the above entitled action entered in the office of the Clerk of the County of New York on the 30th day of June, 1939, wherein it is ordered and adjudged that the complaint in the above entitled action be

Notice of Appeal by United States of America.

10 dismissed upon the merits in favor of the defendant, Louis H. Pink, Superintendent of Insurance of the State of New York, and as Liquidator of the United States Branch of the First Russian Insurance Company Established in 1827, and from each and every part of said order and/or judgment.

Dated: New York; N. Y., July 11, 1939.

JOHN T. CAHILL,

United States Attorney for the
Southern District of New York,

Attorney for Plaintiff,

United States of America,

Office & P. O. Address,

United States Court House,

Foley Square,

Borough of Manhattan,

City of New York.

To:

JOHN M. DOWNES, Esq.,

Attorney for the Superintendent of
Insurance of the State of New York,

Office & P. O. Address,

State Office Building,

Albany, N. Y.

12.

New York Office,

160 Broadway;

New York, N. Y.

5

OrderAppealed From.

At a Special Term, Part III, of the Supreme Court of the State of New York, held in and for the County of New York, at the County Court House, Borough of Manhattan, City, County and State of New York, on the 29 day of June, 1939.

13

Present:

HON. AARON J. LEVY,

Justice.

[SAME TITLE]

14

A motion having been made by the defendant, Louis H. Pink, Superintendent of Insurance of the State of New York, and as Liquidator of the Domesticated United States Branch of the First Russian Insurance Company Established in 1827, by a notice of motion dated May 17, 1939 for an order dismissing the complaint herein and awarding summary judgment in favor of the defendant, Superintendent of Insurance of the State of New York, and as Liquidator of the United States Branch of the First Russian Insurance Company Established in 1827, on the ground that there is no merit to the action and that it is insufficient in law; and said motion having regularly come on to be heard before this Court on the 6th day of June, 1939 and thereafter adjourned to the 13th day of June, 1939;

OrderAppealed From.

Now, on reading and filing the complaint herein, verified the 16th day of November, 1937, the answer herein duly verified the 24th day of March, 1938, and upon reading and filing the notice of motion herein dated May 17, 1939, with due proof of service thereof, together with the affidavit of John M. Downes, sworn to May 17, 1939, in support of said motion, the affidavit of Leon E. Spencer, sworn to June 6, 1939, in opposition thereto, and after hearing John M. Downes, Attorney for the defendant, Louis H. Pink, Superintendent of Insurance of the State of New York, and as Liquidator of the Domesticated United States Branch of the First Russian Insurance Company Established in 1827, in support of said motion, and John T. Cahill, United States Attorney, by Leon E. Spencer, of counsel, in opposition thereto, and due deliberation having been had thereon, and upon filing the decision of the Court,

Now, on motion of John M. Downes, Attorney for the defendant, Louis H. Pink, Superintendent of Insurance of the State of New York, and as Liquidator of the United States Branch of the First Russian Insurance Company Established in 1827, it is

Ordered, that the motion herein for an order dismissing the complaint and awarding summary judgment in favor of the defendant, Louis H. Pink, Superintendent of Insurance of the State of New York, and as Liquidator of the United States Branch of the First Russian Insurance Company Established in 1827, pursuant to Rule 113 of the Rules of Civil Practice, be and the same hereby is in all

OrderAppealed From.

respects granted, and the said complaint be and the same hereby is dismissed on the merits; and it is hereby further

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Ordered, that judgment herein be entered, in favor of the defendant, Louis H. Pink, Superintendent of Insurance of the State of New York, and as Liquidator of the United States Branch of the First Russian Insurance Company Established in 1827, against the plaintiff, United States of America, dismissing the complaint herein on the merits, together with the costs of this action to be taxed by the Clerk, and that said judgment be entered by the Clerk of the Court without further order.

20

Enter,

A. J. L.,
J. S. C.

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Judgment Appealed From.

22

**SUPREME COURT
OF THE STATE OF NEW YORK
NEW YORK COUNTY**

County Clerk's Number 32347—1937

[SAME TITLE]

A motion having been made herein by the defendant, Louis H. Pink, Superintendent of Insurance of the State of New York, and as Liquidator of the Domesticated United States Branch of the First Russian Insurance Company Established in 1827, to dismiss the complaint and for summary judgment in favor of said defendant, Louis H. Pink, Superintendent of Insurance of the State of New York, and as Liquidator of the Domesticated United States Branch of the First Russian Insurance Company Established in 1827, and against the plaintiff, United States of America, and said motion having been duly argued at Special Term, Part III, of the Supreme Court of the State of New York, held in and for the County of New York on the 6th and 13th days of June, 1939, and the Court after due deliberation having granted said motion, and an order having been duly granted by the said Special Term of this Court dated and entered in the office of the Clerk of New York County on the 29 day of June, 1939 granting said motion and dismissing the complaint and directing judgment as hereinafter provided, and the defendant's costs having been duly taxed at the sum of \$25.00,

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JudgmentAppealed From.

Now, on motion of John M. Downes, Attorney for the defendant, Louis H. Pink, Superintendent of Insurance of the State of New York, and as Liquidator of the Domesticated United States Branch of the First Russian Insurance Company Established in 1827, it is

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Adjudged, that the plaintiff's complaint be, and the same hereby is dismissed upon the merits, and that the defendant, Louis H. Pink, Superintendent of Insurance of the State of New York and as Liquidator of the Domesticated United States Branch of the First Russian Insurance Company Established in 1827, of 160 Broadway, New York City, have judgment in his favor dismissing the complaint herein and that said defendant recover of the said plaintiff of U. S. Court House, New York City, the sum of \$25.00, his costs in this action as taxed.

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ARCHIBALD R. WATSON.

27

**Notice of Motion to Dismiss Complaint
and for Summary Judgment.**

28 **SUPREME COURT
OF THE STATE OF NEW YORK
NEW YORK COUNTY**

[SAME TITLE]

Sirs:

29 Please take notice that on the complaint herein, verified the 16th day of November, 1937, and the answer herein, verified the 24th day of March, 1938, and on the affidavit of John M. Downes, sworn to the 17th day of May, 1939; a motion will be made at a Special Term, Part III, of the Supreme Court of the State of New York, to be held in and for the County of New York, at the Court House therein, on the 6th day of June, 1939, at the opening of court on that day, or as soon thereafter as counsel can be heard, for an order dismissing the complaint herein and awarding summary judgment in favor of the defendant, Superintendent of Insurance of the State of New York, as Liquidator of the United States Branch of First Russian Insurance Company Established in 1827, pursuant to Rule 113 of the Rules of Civil Practice and Section 476 of the Civil Practice Act, 30 on the ground that there is no merit to the action and that it is insufficient in law, and for such other and different relief as may be proper, with the costs of this motion.

*Notice of Motion to Dismiss Complaint and for
Summary Judgment.*

Please take further notice that pursuant to Rule 64 of the Rules of Civil Practice you are required to serve answering affidavits at least five (5) days before the return day of this motion. 31

Dated, New York, N. Y., May 17, 1939.

Yours, etc.,

JOHN M. DOWNES,

Attorney for Superintendent of Insurance, as Liquidator of the United States Branch of First Russian Insurance Company Established in 1827, 32

Office & P. O. Address,

160 Broadway,
Borough of Manhattan,
New York City, N. Y.

To:

JOHN T. CAHILL, Esq.,

United States Attorney for the
Southern District of New York,

Attorney for United States of America,
U. S. Court House,
Foley Square, New York City, N. Y. 33

**Affidavit of John M. Downes, Read in
Support of Motion.**

34

**SUPREME COURT
OF THE STATE OF NEW YORK
NEW YORK COUNTY**

UNITED STATES OF AMERICA,

Plaintiff.

35

**LOUIS H. PINK, Superintendent of Insurance of
the State of New York, and as Liquidator of
the Domesticated United States Branch of the
FIRST RUSSIAN INSURANCE COMPANY ESTAB-
LISHED IN 1827, and others,**

Defendants.

**STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.**

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John M. Downes, being duly sworn, deposes and says that he is an attorney at law and the attorney for the Superintendent of Insurance of the State of New York as liquidator of the United States Branch of the First Russian Insurance Company Established in 1827, one of the defendants herein, and is familiar with and has knowledge of the facts concerning this litigation and the proceedings involving the liquidation of the United States Branch of the company in New York.

*Affidavit of John M. Downes, Read in Support
of Motion.*

This affidavit is made in support of the motion to dismiss the complaint herein and for a summary judgment in favor of defendant, the Superintendent of Insurance.

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There is no dispute as to the facts. The complaint alleges and the verified answer admits the facts concerning the history of the organization of the United States Branch of the First Russian Insurance Company Established in 1827 and the facts concerning the proceedings and litigations involving the said company since its admission to do business in the State of New York in 1907. The verified answer merely denies certain conclusions of law in the complaint and sets forth six separate defenses to the plaintiff's cause of action. These defenses need not now be considered for the complaint standing alone is insufficient in law and must be dismissed.

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This action was brought by the United States of America as assignee of the Union of Soviet Socialist Republics (Complaint, paragraph 19). The plaintiff seeks judgment declaring it to be the owner of the funds of the United States Branch of the First Russian Insurance Company in possession of the Superintendent of Insurance, as Liquidator, and directing the liquidator to turn said funds over to the plaintiff. The plaintiff claims ownership of the funds by virtue of several decrees of the Russian Government which, it is claimed, dissolved, terminated and nationalized all Russian insurance companies and organizations. It is further alleged that these decrees transferred title to the assets of the United States Branch of the First

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*Affidavit of John M. Downes, Read in Support
of Motion.*

40 Russian Insurance Company Established in 1827 to the Russian State which in turn assigned the property to the United States of America on November 16, 1933 (Complaint, paragraphs 8-9).

The bases, therefore, of the claim of the plaintiff are the Soviet decrees which, it is asserted, have extraterritorial effect and had force to transfer title to property always in the State of New York to the Soviet government.

41 Whatever may have been the law when the complaint herein was served and issue joined by the defendant's answer, it is now authoritatively settled by virtue of the decision of the Court of Appeals of the State of New York in *Moscow Fire Insurance Company v. Bank of New York and Trust Company*, 280 N. Y. 286, decided April 11, 1939, that the right to assets belonging to the United States Branch of a Russian insurance company is not dependent upon "the law of Russia as formulated in the Soviet decrees", and that no decree "could possibly have been intended to apply to business conducted here, or if so intended could be binding here".

42 The Court of Appeals in the *Moscow* case was dealing with property belonging to the United States Branch of the Moscow Fire Insurance Company, which company was authorized to do business in the State of New York, and which had made statutory deposits pursuant to the Insurance Law in exactly the same manner as did the First Russian Insurance Company involved in the instant case.

*Affidavit of John M. Downes, Read in Support
of Motion.*

The plaintiff alleges (Complaint, Paragraph 6) that there was organized and established in 1907 in the State of New York "a domesticated United States Branch, in compliance with the laws of the State of New York", which branch "was thereupon authorized by the State of New York to transact and thereafter did transact business in this State and elsewhere in the United States under reciprocal laws then in force in other states of the United States". This allegation is admitted by the defendant, the Superintendent of Insurance as Liquidator of the First Russian Insurance Company. The plaintiff further alleges (Complaint, paragraph 7) that as part of its compliance with the laws of the State of New York there was deposited with the Superintendent of Insurance, cash, securities and other assets. This, too, is admitted by the defendant.

So far as it is material here therefore, the facts in the *Moscow* and the instant cases are parallel. The facts could not be different because both companies had to comply with the provisions of Section 27 of the Insurance Law (Cons. Laws, Ch. 78) as a condition precedent to doing business here.

The Soviet decrees involved are also the same. In the *Moscow* case the United States relied on the decree of November 18, 1919 annulling all life insurance contracts, a decree dated March 4, 1919 on the liquidation of obligations of State enterprises and a decree dated June 28, 1918 that certain enterprises located within the Soviet Union are the property of the Republic. In the instant

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*Affidavit of John M. Downes, Read in Support
of Motion.*

case the same decrees are relied upon (Complaint, paragraph 8).

6 In the *Moscow Fire Insurance Company* case the Court of Appeals has held that the property of the United States Branch claimed by the plaintiff was property which at all times had been within the State of New York, title to which had always been in various trustees and which always had been subject to the control of the Insurance Department. The Court held that such property was immune from Russian governmental control, and that decrees of such a government could not affect the property of the United States Branch of a Russian insurance company. The Court of Appeals therefore held that foreign creditors who, in 1931, had been "invited" by that Court to prove their claims in the liquidation proceeding could not now be dismissed empty handed, and rejected the claim of the United States to the funds.

47 Your deponent verily believes that there is no merit as a matter of law to the action set forth in the complaint herein. The undisputed facts show that the monies of the First Russian Insurance Company Established in 1827 have always been within the State of New York and in the custody of either the Superintendent of Insurance of the State of New York or the Court. Since 1925 the company has been in liquidation. The liquidation proceeding has not yet been completed and the Superintendent of Insurance, as Liquidator, is still in control and but for this action would have completed his duty as directed by the Court of Appeals in 1931 (255 N. Y. 415) and paid those claimants whose claims have long since been allowed.

*Affidavit of John M. Downes, Read in Support
of Motion:*

There being no issues of fact to be tried, it is respectfully submitted that the complaint herein be dismissed and that an order be made granting judgment to the defendant, Louis H. Pink, Superintendent of Insurance of the State of New York as Liquidator of the domesticated United States Branch of the First Russian Insurance Company Established in 1827, together with costs.

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JOHN M. DOWNES.

Sworn to before me this

17th day of May, 1939.

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ELIZABETH SAWYER

Notary Public, Kings County, N. Y.

Kings County Clerk's No. 29

N. Y. County Clerk's No. 156

Term Expires March 30, 1940

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Summons Read in Support of Motion.**SUPREME COURT****NEW YORK COUNTY**

[SAME TITLE]

Plaintiff designates New York County as place of Trial.

To the Above-Named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: November 16, 1937.

LAMAR HARDY,

United States Attorney for the
Southern District of New York,

Attorney for Plaintiff,

Office & P. O. Address,

United States Courthouse,

Foley Square,

Borough of Manhattan,

New York City.

Complaint Read in Support of Motion.

SUPREME COURT

NEW YORK COUNTY

55

[SAME TITLE]

The United States of America, hereinafter called the plaintiff, by its attorney, Lamar Hardy, United States Attorney for the Southern District of New York, for its complaint herein alleges upon information and belief:

1. The plaintiff, United States of America, is 56 a corporation sovereign and body politic.

2. The defendant, Louis H. Pink, hereinafter called the Superintendent of Insurance, is the Superintendent of Insurance of the State of New York.

3. The First Russian Insurance Company, established in 1827, hereinafter called the Insurance Company, prior to 1918 was a corporation organized and existing under the laws of the Empire of Russia and authorized to conduct the business of insurance.

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4. The defendants, other than the Superintendent of Insurance, are the alleged policy holders and creditors of the Insurance Company who have presented claims against the Insurance Company to the defendant Superintendent of Insurance in

Complaint Read in Support of Motion.

the proceeding (1925 No. 26150) pending in this Court, hereinafter called the liquidation proceeding, entitled "In the Matter of the Liquidation of the First Russian Insurance Company Established in 1827", and, as such claimants, are represented in the liquidation proceedings by various attorneys as follows: Victor Yermaloff, Alexander Moslenikoff, Sergei Nicolaevitch Serrebrenikoff, G. Frank Dougherty, assignee of several claimants as more fully appears in the caption herein, Nicolai P. Kotuchno, assignee for Alexander Corradi, George J. Hadjinoff, assignee for several claimants as more fully appears in the caption herein, by Engelhard, Pollak, Pitcher & Stern, Esqs.; Munich Reinsurance Co., by John J. Cuneen, Esq.; Northern Assurance Co. Ltd., Liverpool & London & Globe Insurance, North British & Mercantile Insurance Co. Ltd., Phoenix Assurance Co. Ltd., Alliance Assurance Co. Ltd., by Rumsey & Morgan, Esqs.; Frederick B. Campbell and Campbell & Whipp, Lounsbury D. Bates, assignee of Russian Reinsurance Company, by Campbell & Whipp, Esqs.; Michael Imchanitzky by George Frankenthaler, Esq.; Giles J. Swan, assignee of several claimants as more fully appears in the caption herein, by Cabell, Ignatius & Lown, Esqs.; James A. Tillman, in person; Jacob Bermant, by Morris Zwierling, Esq.; Abraham Moses Rabinowitz, in person; Maria and David Barbush, by Louis Lende, Esq.; Eli Powsner, by Jerome Renitz, Esq.; Wolf B. Shulman, by Harry B. Lader, Esq.; Hamshey Judas Kalomoitzev, Isaac Maisel and Etna Salmon Miliowsky, Szyman, Abeg's

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Complaint Read in Support of Motion.

son Leuftman, Oscar Baselgia, Georg Brusendorff, Ludwik Kaptowski, Tewel and Lejba Kewes, Alex Hejnpuu, Carl E. Schneider, Zygfryd Englisch, Alexander Gherman, assignee of, and attorney in fact for, several claimants as more fully appears in the caption herein, Boris M. Komar, attorney in fact, for Joseph Thomas Ludwig Silpop and Mauryce Frenkiel, Boris Katz, attorney in fact for Lieba Ietzek and Leo Issakomitz Pliss, Zygfryd Englisch, assignee of Israel Bender, George Diamond, attorney in fact for Jacob David Diment, Benjamin N. Kraut, by Boris Komar, Esq.; Felix Falks, Paul von Firs, Mary Krusenstiern, R. Max, Hermann, Heimberg, Johann Poo, Gustav Kuett, Olja Bergmann, Arved Rosenstein, Yuldver, Harry Carl Redelien, J. Westholm, Alexander Gabis, Marceli Wolanowski, Emil Fahle, Chr. Heiduck, Victor Malm, Alexander Luck, Samson Selig, assignee and attorney in fact for several claimants as more fully appears in the caption herein, Andrew Ditmar, assignee of several claimants as more fully appears in the caption herein, by Samson Selig, Esq.; Ruth A. Lippner, assignee of several claimants as more fully appears in the caption herein, Hannah Warshaw, assignee of several claimants as more fully appears in the caption herein, Arthur Sadde, attorney in fact for Hans Sadde, by Szold, Perkins & Brandwen, Esqs.; Charles Recht, attorney in fact for several claimants as more fully appears in the caption herein, by Charles Recht, Esq.; Helen Marsh, attorney in fact for Schmul Abromovich Glogowski, by Hellinger & Reichart, Esq.; Marks F. Paskes in his own behalf; Nina E. Hillquit, by Morris Hillquit,

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Complaint Read in Support of Motion.

Esq.; Zygfyryd Englisch, by Blum & Jolles, Esqs.; Francis J. Donnelly, by Bonynge & Barker, Esqs.; Dorothy Weidenfeld, by Kurzman & Frank, Esqs.; Bessie Smith, by Nordlinger & Riegelman, Esqs.; Anna Binder, by Maximillian L. Blek, Esq.; Paul E. Tuthill, attorney in fact for several claimants as, more fully appears in the caption herein, by Paul E. Tuthill, Esq.; Aaron Sroulevitch, attorney in fact for Thel Kelmanovitch Sroulevitch, in his own behalf; Solon Friede, by Isidore Witkind, Esq.; Abram Fialke, by Samuel Fine, Esq.; Samuel Jacob Goldman, by Jacob Chaitkin, Esq.; Shneer Meyrowitz, by George Lion Cohen, Esq.; Mollie Pineles, by Jeremiah C. Lazar, Esq.

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5. The plaintiff possesses and asserts sovereign right, title and interest under the constitution, laws, treaties, executive agreements, international compacts, and authority of the United States in and to the fund which is the subject of this action, as more particularly set forth hereinafter in this complaint.

66 6. In or about 1907 the Insurance Company established in the United States and in the State of New York a domesticated United States branch, in compliance with the laws of the State of New York, and was thereupon authorized by the State of New York to transact and thereafter did transact business in this State and elsewhere in the United States under reciprocal laws then in force in other States of the United States.

7. The Insurance Company then and thereafter engaged in the business of fire and reinsurance in

Complaint Read in Support of Motion.

the United States until 1918 or thereabouts and had certain cash securities and other assets in the State of New York, and as part of its compliance with the laws of the State of New York had deposited with the then Superintendent of Insurance certain of the said cash securities and other assets as a fund out of which should be paid the claims of all persons, hereinafter called domestic creditors, who transacted business with the domesticated United States branch of the Insurance Company.

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8. In 1918 and thereabouts, the Russian Government, by its laws, decrees, enactments, and orders including among others a decree dated April 18, 1918, regarding the registration of securities, a decree dated November 28, 1918, on the organization of the insurance business, a decree dated March 4, 1919, on the liquidation of state enterprises, and a decree of November 18, 1919, on the annulment of life insurance contracts, among others, proclaimed the business of insurance in all of its forms to be a monopoly of the Russian State; dissolved, terminated, and liquidated all Russian insurance companies and organizations; nationalized all of the property and assets of every kind and wheresoever situated of all Russian insurance companies and organizations; discharged, cancelled, extinguished, and annulled all of the debts and liabilities of all Russian insurance companies and organizations; discharged, cancelled, extinguished, and annulled the shares in, and the rights of all shareholders in and to, all the property and assets of all Russian in-

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Complaint Read in Support of Motion.

70 surance companies and organizations; and discharged, cancelled, extinguished and annulled all of the obligations and liabilities of all insurance companies and organizations to all of their shareholders.

71 9. The First Russian Insurance Company, established in 1827, which prior to 1918, as alleged hereinbefore, was a corporation organized and existing under the laws of the Russian State, by the said laws, decrees, enactments, and orders of the Russian Government was dissolved, terminated, and liquidated, and all of its property and assets of every kind and wheresoever situated, including the aforesaid assets in New York, were nationalized and all of its debts, liabilities, and obligations to all of its creditors and shareholders, including the alleged debts, liabilities, and obligations to creditors who are defendants in this action were discharged, cancelled, extinguished and annulled.

72 10. As a result of said duly enacted laws, decrees, enactments and orders of the Russian Government, the said cash, securities and other assets of the insurance Company in the United States and in the State of New York became the property of the Russian Government and remained the property of the Russian State at all times up to November 16, 1933, as hereinafter set forth.

11. On or about February 24, 1924, an action was commenced in the Supreme Court, New York County, by the Insurance Company and Paul Ra-

Complaint Read in Support of Motion.

sor, the former United States manager of the Insurance Company, against the Superintendent of Insurance to compel the Superintendent of Insurance to deliver to Paul Rasor securities deposited with the Superintendent of Insurance to obtain authority and permission for the Insurance Company to do business in New York and in the United States. Judgment was rendered therein directing the defendant to surrender to the plaintiff, Paul Rasor, part of the said securities of the par value of \$150,000. That judgment, as modified by the Appellate Division (212 App. Div. 861), was affirmed by the Court of Appeals (240 N. Y. 601) which denied a motion for reargument (240 N. Y. 643). Thereafter the said securities of the par value of \$150,000, were delivered to Paul Rasor on July 14, 1925.

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12. In the proceeding now pending in the Supreme Court, New York County and entitled "*In the Matter of the Application of the People of the State of New York by James A. Beha, Superintendent of Insurance of the State of New York for an Order to Take Possession of the Property and Conserve the Assets for the Benefit of the Creditors of the First Russian Insurance Company, Established in 1827, and the Interests of its Policy-holders, Creditors, Stockholders and the public*", an order of this Court, dated and entered on August 8, 1925, resettled by an order dated and entered on September 11, 1925, directed the Superintendent of Insurance and his successors in office forthwith to take possession of the property and conserve the assets in the United States of the

Complaint Read in Support of Motion.

76 Insurance Company (with the exception of the securities of the value of \$150,000 hereinbefore mentioned, and delivered to Paul Rasor on July 14, 1925), directed the Superintendent of Insurance to determine and report the claims of policyholders and creditors in the United States of the Insurance Company and of the United States branch of the Insurance Company, and restrained all creditors and policyholders from bringing any action or proceeding or in any way interfering with the Superintendent's control of the Insurance Company's property. Thereafter, the Superintendent of Insurance took possession of all of the assets of the domesticated United States branch of the Insurance Company (with the exception of the said securities of the value of \$150,000) and proceeded to determine the claims of creditors of the Insurance Company.

77 13. The first report, audit and petition of the Superintendent of Insurance as liquidator of the domesticated United States branch of the Insurance Company dated August 11, 1927, and filed in the office of the Clerk of New York County on August 18, 1927, stated in a recapitulation of assets and debts that the market value on August 8, 1927 of the assets of the Insurance Company received and recoverable by the Superintendent of Insurance was \$1,362,982.97 and that of the total claims filed in the amount of \$794,693.98, claims of \$30,655.68 had been allowed, undetermined claims of \$10,000 had been allowed as valid and the remaining claims of \$754,038.30 had been disallowed, including domesticated claims of \$5,500.

Complaint Read in Support of Motion.

foreign claims of \$738,147.73 and attachment claims of \$10,390.57, which left a prospective surplus of \$1,322,327.29.

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14. An order of this Court dated December 5, 1927, and entered on December 6, 1927 in the aforesaid liquidation proceeding confirmed the said first report of the Superintendent of Insurance, except that the order referred all objections to disallowances and classifications of claims in the first report to a referee to take evidence and report to the Court thereon, and appointed two receivers of the property of the Insurance Company and directed the Superintendent immediately to surrender and deliver to the receivers the surplus fund remaining in his possession after payment of all local domestic policyholders of the "First Class" as defined by the Court of Appeals (*Matter of People, Norske Lloyd Insurance Co., Ltd.*, 242 N. Y. 148). An order of the Appellate Division, dated March 30, 1928, with opinion (223 App. Div. 378) modified the order of this Court by reversing the provision with respect to a receivership. No appeal was taken to the Court of Appeals from the determination of the Appellate Division and objections to the disallowances and classifications of claims in the first report were brought on before a referee.

80

15. The second report, audit and petition of the Superintendent of Insurance, dated May 22, 1929 and filed May 31, 1929, stated that there was a prospective surplus of \$1,335,653.73 available for distribution and suggested that such surplus should be held until diplomatic recognition of the Government of Russia by the Government of the United

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Complaint Read in Support of Motion.

82 State and that such surplus should be transmitted or distributed in accordance with directions and decrees of this Court, made pursuant to the laws and public policy of this State and the treaty obligations of the United States.

16. An order of this Court, dated and entered September 9, 1929, pursuant to a decision dated July 26, 1929, confirmed the second report of the Superintendent of Insurance and referred the question of distribution of the surplus pursuant to the suggestion and plan of the Superintendent of Insurance to the referee for determination. An order of this Court, dated and entered September 10, 83 1929, upon the decision of the referee directed the Superintendent of Insurance to continue to hold the surplus fund. An order of the Appellate Division, filed June 11, 1930, with opinion (229 App. Div. 637) affirmed that order of this Court dated September 10, 1929, continued in force the injunction contained in the order of this Court of August 8, 1925 and directed the Superintendent of Insurance to retain the surplus funds.

84 " * * until the Government in Russia is recognized by the United States or until the surplus funds may be transmitted to a liquidator or legal representative of the corporation at the domicile abroad or in accordance with any provision of a Treaty of the United States."

On February 10, 1931, the Court of Appeals rendered a decision (255 N. Y. 415) which reversed the said order of the Appellate Division, dissolved the injunction and directed that the surplus fund

Complaint Read in Support of Motion.

be paid over to a quorum of the directors of the Insurance Company, in accordance with the decision, after payment of foreign creditors who filed claims with the Superintendent of Insurance before entry of the order or judgment on the remittitur of the Court of Appeals on the decision (256 N. Y. 131). The order on remittitur, dated and entered June 16, 1931, resettled on July 13, 1931, vacated the injunction and directed the Superintendent of Insurance, after payment of any domestic creditors who had not been paid, to determine foreign claims theretofore filed on which attachments had been obtained prior to the order dated August 8, 1925, and to determine other foreign claims.

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17. The third report, audit and petition of the Superintendent of Insurance, dated January 20, 1932, and filed on February 5, 1932, for the period of time from March 7, 1929 to June 16, 1931, was confirmed by an order of this Court, dated and entered on May 13, 1932, which determined the surplus assets to be cash and securities in the sum of \$1,300,198.42 on June 16, 1931 after payment of all domestic creditors, ordered that foreign claims which had theretofore been filed with the Superintendent of Insurance as liquidator of the Insurance Company on or before June 16, 1931, be disallowed in the domestic liquidation; but provided that these foreign claims might be thereafter proven in the liquidation proceeding pursuant to the decision of the Court of Appeals (255 N. Y. 415) and decreed that there were no surplus assets against which further attachments might be levied or available for distribution to a quorum of the directors of the Insurance Company.

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Complaint Read in Support of Motion.

18. The fourth report, audit and petition of the Superintendent of Insurance, dated and filed November 9, 1933, stated that pursuant to the authority of the said decision of the Court of Appeals (255 N. Y. 415), claims based on policy contracts not made with the domesticated United States branch of the Insurance Company, including 1168 life insurance policies, 17 accident insurance policies and 3 fire insurance policies, and claims of approximately 30 general creditors on reinsurance agreements or for services rendered as directors or employees or representatives of the Insurance Company, were presented to the Superintendent of Insurance as liquidator prior to June 16, 1931.

88 89 90 This fourth report set forth that the said policy claims might be evaluated under a proposed Formula Number 1, based on the theory that the Insurance Company as a whole became insolvent on December 1, 1918, the date of publication of the aforementioned Soviet decree on the organization of the insurance business, dated November 30, 1918, and nationalizing the Insurance Company, and that the available assets should be distributed on the basis of the value of the policy contracts on December 1, 1918, without reference to the effect of subsequent mortality or other events in maturing certain of the insurance policy contracts and terminating certain annuities. The Superintendent of Insurance recommended the evaluation of the policies under this Formula Number 1. The fourth report also set out an alternative method of evaluation, Formula Number 2, based on the theory that the insurance policy contracts continued to maturity according to their terms to the extent of a reduced

Complaint Read in Support of Motion.

amount of insurance based upon the actual premiums paid in view of the fact that premium payments were discontinued. The fourth report recommended that the policies should be valued under Formula Number 1 at \$0.15 a ruble as of December 1, 1918 and that as soon as practicable without delay a dividend not exceeding 100% of the policy claims as allowed at the rate of \$0.15 a ruble should be paid to be applied as a dividend on the policy claims if another formula of evaluation should be directed.

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The fourth report recommended the allowance and payment of various policy and other claims of foreign origin and the disallowance or suspension of various other policy claims and other claims of foreign origin.

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19. On November 16, 1933, by an agreement as set forth in an exchange of diplomatic correspondence between the President of the United States and the Commissar for Foreign Affairs of the Union of Soviet Socialist Republics coincident with diplomatic recognition of the Soviet Government by the United States Government, a copy of which correspondence is annexed as Exhibit 1 to this complaint and made a part hereof as if set forth in full herein, the Union of Soviet Socialist Republics assigned to the plaintiff all amounts admitted to be due or that may be found to be due to the Union of Soviet Socialist Republics, including the entire said surplus assets involved in this action. Since November 16, 1933 the plaintiff has been and now is the sole and exclusive owner and entitled to immediate possession of the said surplus assets.

93

Complaint Read in Support of Motion.

94 20. An order of this Court dated and entered December 13, 1933 confirmed the said fourth report of the Superintendent of Insurance dated November 9, 1933 and ordered payment of a 100% dividend on the allowed policy claims evaluated under Formula Number 1 at \$0.125 a ruble without interest. Thereupon the said payments on account were made and the question of further payments based on evaluation of the policy claims under another formula and on allowance of interest were suspended pending further litigation.

95 21. An order of this Court dated and entered on March 13, 1934 ordered that the issues presented by the motion to confirm the fourth report and not decided by the order of this Court dated and entered December 13, 1933, and the issues raised by objections to the fourth report, be referred to a referee to hear and take evidence on the said issues and to report to this Court thereon. A further order of this Court dated and entered on December 6, 1934 referred two additional claims to the referee to hear and report.

96 22. On November 14, 1934 a suit in equity was commenced in the United States District Court for the Southern District of New York by the plaintiff in this action against the then Superintendent of Insurance, entitled "*United States of America v. George S. Van Schaick, Superintendent of Insurance of the State of New York, Liquidator of the Domesticated United States Branch of the First Russian Insurance Company Established in 1827*". The bill of complaint therein alleged that the United States was the sole and exclusive owner

Complaint Read in Support of Motion.

of the entire surplus fund held by the Superintendent of Insurance and prayed that the Superintendent of Insurance be required to make an accounting and to pay over the entire surplus fund to the United States. Dismissal of the bill complaint by a decree of the District Court dated December 20, 1934, for failure to state a cause of action, on the ground that the claim of the United States was against the public policy of the State of New York (10 Fed. Supp. 269) was affirmed by an order of the Circuit Court of Appeals dated May 27, 1935 (77 F. (2d) 881). By an order of the Supreme Court of the United States dated January 6, 1936 (296 U. S. 463) the decree of the Court below was affirmed, solely on the ground that the District Court lacked jurisdiction of the suit, because the fund was in the custody of the State Court. The Supreme Court further ruled that the United States must invoke the jurisdiction of this Court in order to determine its claim to the surplus fund.

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23. The report of the referee appointed pursuant to the said order of this Court dated March 13, 1934 was dated January 25, 1936 and was filed on January 27, 1936 and provided that the policy claims should be paid pursuant to Formula Number 1 with interest thereon from December 1, 1918 and that interest should be paid on other allowed claims at 6% per annum from December 1, 1918.

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24. Following the said determination of the Supreme Court of the United States on January 6, 1936 and by an order to show cause dated February 4, 1936 in the said liquidation proceeding in

Complaint Read in Support of Motion.

100 this Court; the United States made a motion in the said liquidation proceeding for an order restraining the Superintendent of Insurance, pending final determination of the rights of the United States to the entire surplus fund, from paying out any part of the entire surplus fund, adjudging that the proceeding before the Superintendent of Insurance to determine other claims to the surplus fund be terminated immediately, adjudging that judgments in favor of alleged creditors of the Insurance Company be vacated, and adjudging that the United States was the sole and exclusive owner entitled to immediate possession of the entire fund. An order of this Court dated and entered on March 14, 1936

101 denied this motion of the United States "without prejudice to the institution of the time-honored form of action". An order of the Appellate Division dated and filed June 30, 1936 without opinion affirmed the said order of this Court dated March 14, 1936. The Appellate Division by an order dated and filed October 23, 1936, and the Court of Appeals by an order of December 1, 1936 denied motions of the United States for leave to appeal to the Court of Appeals.

102 25. An order of this Court dated and entered on March 30, 1936 in the said liquidation proceeding confirmed the said report of the referee filed on January 27, 1936 and ordered that, pending final determination of an action to be hereafter instituted by the United States with all convenient speed, payment of any allowed claims in the said proceeding be stayed until further order of the Court. An order of the Appellate Division dated and filed February 26, 1937 affirmed the said order

Complaint Read in Support of Motion.

of March 30, 1936 without opinion and the decision of the Court of Appeals on May 25, 1937 affirmed the order of the Appellate Division without opinion.

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26. Unless the right and title of the plaintiff to the entire surplus fund, after payment of domestic creditors who already have been paid in full, is determined in this action, applications will be made in the said liquidation proceeding to modify the stay of payment of claims in the said order of this Court dated March 30, 1936 and demands will be made upon the Superintendent of Insurance to pay out the entire surplus fund of over \$1,000,000. Thereupon, the plaintiff will be deprived of its right to obtain an adjudication of its title to the entire surplus fund before distribution to numerous claimants, and plaintiff's rights will thereby be defeated. Therefore, the plaintiff is threatened with great, immediate and irreparable damage to its property rights, and the necessity will arise for a multiplicity of suits by the plaintiff against numerous claimants involving the same questions after distribution of the surplus fund in order to enforce the rights of the plaintiff to the surplus fund.

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27. The plaintiff has no adequate remedy at law, or otherwise, to determine its right and title to the entire surplus fund unless this Court grants the relief now prayed herein.

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28. The plaintiff has not sought the relief prayed herein, except as alleged above, from any other court or judge.

Complaint Read in Support of Motion.

Wherefore, the plaintiff prays:

106 (1) That the Superintendent of Insurance be restrained permanently and pending final determination of the plaintiff's rights in this action from distributing any part of the said entire surplus fund to anyone other than the plaintiff.

(2) That all further proceedings in the said liquidation proceedings in this Court be stayed pending final determination of the rights of the plaintiff in the action.

107 (3) That this Court vacate and set aside all judgments of this Court whatsoever of creditors other than the aforesaid domestic creditors.

(4) That this Court adjudge and determine that the plaintiff is the sole and exclusive owner entitled to immediate possession of the entire surplus fund, and direct the Superintendent of Insurance to act for and to pay over to the plaintiff the entire surplus fund.

(5) That an order be entered for the service of the summons and this complaint by publication upon the said defendants herein and upon anyone claiming, or having, an interest in the subject of this action, who are not found after due diligence within the jurisdiction of this Court in this action.

108 (6) That the plaintiff be granted such other and further relief as the Court may deem just and proper in the premises.

LAMAR HARDY,

United States Attorney for the
Southern District of New York,
Attorney for Plaintiff.

(Verified November 16, 1937, by Leon E.
Spencer.)

EXHIBIT 1 ANNEXED TO COMPLAINT.

Washington,

November 16, 1933.

106a

My dear Mr. President:

Following our conversations I have the honor to inform you that the Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counterclaims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

107a

The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above not to make any claims with respect to:

108a

Exhibit 1 Annexed to Complaint.

106b (a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights, or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or,

(b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits, or obligations of any Government of Russia or nationals thereof.

107b I am, my dear Mr. President,

Very sincerely yours,

MAXIM M. LITVINOV,
People's Commissar for Foreign Affairs.
Union of Soviet Socialist Republics.

Mr. Franklin D. Roosevelt,
President of the United States of America,
The White House.

Exhibit 1 Annexed to Complaint.

THE WHITE HOUSE
Washington

November 16, 1933. 106e

My dear Mr. Litvinov:

I am happy to acknowledge the receipt of your letter of November 16, 1933, in which you state that:

"The Government of the Union of Soviet Socialist Republics agrees that, preparatory to a final settlement of the claims and counter claims between the Governments of the Union of Soviet Socialist Republics and the United States of America and the claims of the their nationals, the Government of the Union of Soviet Socialist Republics will not take any steps to enforce any decisions of courts or initiate any new litigations for the amounts admitted to be due or that may be found to be due it, as the successor of prior Governments of Russia, or otherwise, from American nationals, including corporations, companies, partnerships, or associations, and also the claim against the United States of the Russian Volunteer Fleet, now in litigation in the United States Court of Claims, and will not object to such amounts being assigned and does hereby release and assign all such amounts to the Government of the United States, the Government of the Union of Soviet Socialist Republics to be duly notified in each case of any amount realized by the Government of the United States from such release and assignment.

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Exhibit 1 Annexed to Complaint.

108d. "The Government of the Union of Soviet Socialist Republics further agrees, preparatory to the settlement referred to above, not to make any claim with respect to:

(a) judgments rendered or that may be rendered by American courts in so far as they relate to property, or rights or interests therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest; or

107d (b) acts done or settlements made by or with the Government of the United States, or public officials in the United States, or its nationals, relating to property, credits or obligations of any Government of Russia or nationals thereof."

I am glad to have these undertakings by your Government and I shall be pleased to notify your Government in each case of any amount realized by the Government of the United States from the release and assignment to it of the amounts admitted to be due, or that may be found to be due, the Government of the Union of Soviet Socialist Republics, and of the amount that may be found to be due on the claim of the Russian Volunteer Fleet.

108d. I am, my dear Mr. Litvinov,

Very sincerely yours,

FRANKLIN D. ROOSEVELT.

Mr. Maxim M. Litvinov,
People's Commissar for Foreign Affairs,
Union of Soviet Socialist Republics."

**Answer of Defendant Louis H. Pink,
Superintendent of Insurance, Read
in Support of Motion.**

109

**SUPREME COURT
NEW YORK COUNTY**

[SAME TITLE]

Louis H. Pink, Superintendent of Insurance of the State of New York as Liquidator of the Domesticated United States Branch of the First Russian Insurance Company Established in 1827, by his attorney John M. Downes, answering the complaint in this action, alleges:

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1. On information and belief admits the allegation contained in Paragraph numbered 3 of said complaint.

2. Denies each and every allegation contained in Paragraphs numbered 5, 9, 10, 26 and 27 of said complaint.

3. Denies each and every allegation contained in Paragraph numbered 7 of said complaint, except that upon admission of the First Russian Insurance Company Established in 1827 to do business in the State of New York and the establishment of its United States Branch, said insurance company deposited assets in and with the State of New York pursuant to and as required by the laws of the State of New York.

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Answer of Defendant Louis H. Pink, Superintendent of Insurance, Read in Support of Motion.

112 4. Denies each and every allegation contained in Paragraph 8 of said complaint, except that commencing in 1918 or thereabouts the Russian Socialist Federated Soviet Republic issued and promulgated various decrees, laws, enactments and orders.

113 5. Denies each and every allegation contained in Paragraph 19 of said complaint in so far as it is therein alleged that any correspondence, agreement or assignment entered into between the Government or President of the United States and the Commissar for Foreign Affairs of the Union of Soviet Socialist Republics or the Russian Government on November 16, 1933, or at any other time, assigned the surplus assets in possession of the Superintendent of Insurance as Liquidator of the First Russian Insurance Company, Established in 1827 to the plaintiff, or that the plaintiff has been or now is the sole and exclusive owner or entitled to possession of said surplus assets, and further denies that the Union of Soviet Socialist Republics ever had any right, title or interest in or to the surplus assets in this action purported to have been so assigned.

114 FOR A FIRST SEPARATE, COMPLETE AND DISTINCT DEFENSE TO THE ALLEGED CAUSE OF ACTION STATED IN THE COMPLAINT IN THIS ACTION DEFENDANT ALLEGES:

6. That the First Russian Insurance Company Established in 1827 was established and organized

Answer of Defendant Louis H. Pink, Superintendent of Insurance, Read in Support of Motion.

in the year mentioned under the laws of the former Empire of Russia. That said company was licensed and admitted to transact the business of fire insurance in the State of New York in or about the year 1907 and from then until shortly prior to 1925 continued to transact such business in the State of New York and in other States of the United States under annual licenses issued by the Superintendent of Insurance of the State of New York and the Insurance Departments of other States.

7. That by an order of the Supreme Court of the State of New York, New York County, dated August 8, 1925 as resettled by an order dated September 11, 1925, and pursuant to Section 63 of the Insurance Law of the State of New York, the Superintendent of Insurance took possession of the assets of the United States Branch of said First Russian Insurance Company Established in 1827, and pursuant to orders and directions of the said Supreme Court and Section 63 of the Insurance Law, the said Superintendent of Insurance investigated, ascertained, fixed and determined the claims of policyholders and creditors of the said company in the United States and paid such of said claims as were found to be valid. That after payment of such policyholders and creditors in the United States a substantial surplus of assets belonging to the United States Branch of the First Russian Insurance Company Established in 1827 remained in possession of the liquidator. That the government of Russia, between November 1917 and November 16, 1933, was unrecognized by the government of the United

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Answer of Defendant Louis H. Pink, Superintendent of Insurance, Read in Support of Motion.

118 States of America. That the Court of Appeals of the State of New York, by its decision in the proceeding entitled,

"In the Matter of the Application of the People of the State of New York, by James A. Beha, Superintendent of Insurance of the State of New York, for an order to take possession of the property and conserve the assets for the benefit of the creditors of the First Russian Insurance Company Established in 1827, and the interests of its policyholders, creditors, stockholders and the public,"

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on February 10, 1931 rendered its decision reported in 255 N. Y. 415, in and by which it was directed that the surplus funds of the United States Branch of the First Russian Insurance Company remaining after payment of policyholders and creditors of said United States Branch should be applied by the liquidator to the liquidation of all valid claims against the First Russian Insurance Company Established in 1827 arising from business transacted by the said company outside of the United States, and that any balance of such surplus then remaining should be available to any other creditors of the company who had not filed claims with the liquidator, for attachment or execution, and that any balance of surplus then remaining should be paid and delivered to the First Russian Insurance Company Established in 1827 as represented by its surviving directors constituting a quorum of the Board. That an order of the New York County

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Answer of Defendant Louis H. Pink, Superintendent of Insurance, Read in Support of Motion.

Supreme Court upon the remittitur of said decision of the Court of Appeals making the order and judgment of the Court of Appeals the order and judgment of the New York County Supreme Court was entered on June 16, 1931. That on November 9, 1933 the Superintendent of Insurance filed in the office of the Clerk of the County of New York his

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Fourth Report, Audit and Petition showing the progress of the liquidation directed by the Court of Appeals (255 N. Y. 415) and the order of the New York County Supreme Court on the remittitur of said decision entered June 16, 1931 as resettled by an order of July 13, 1931. That said Fourth Report, Audit and Petition was confirmed by an order of the New York County Supreme Court entered December 13, 1933, which confirmed allowances of hundreds of claims by the liquidator and directed payment thereof. Those allowed claims were thereupon paid as directed. Certain claims

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and matters covered in said Fourth Report, Audit and Petition were expressly reserved by the Court for further consideration, and such reserved matters were thereafter referred to a referee to hear and report by an order of this Court dated March 13, 1934. That said referee in and by his report dated January 26, 1936 and filed January 27, 1936 reported and recommended that fifty-three (53) certain claims varying in amounts from \$100.00 to \$174,

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281.71, other than those allowed and paid by and pursuant to the order dated December 13, 1933 confirming the Fourth Report, Audit and Petition of the Superintendent of Insurance, should be allowed and paid, and further reported and recommended

Answer of Defendant Louis H. Pink, Superintendent of Insurance, Read in Support of Motion.

that allowed claims be valued and paid pursuant to
124 Formula #1 of said Fourth Report, Audit and Petition, and that interest be paid on such policy claims from December 1, 1918 as well as on other claims set forth in the report, audit and petition and in the report of said referee. That the United States of America, the plaintiff in this action, filed objections to said referee's report and argued in opposition to the motion to confirm the same, and that said referee's report was confirmed by order of this Court dated March 13, 1936, in and by which said claims were allowed and directed to be paid as recommended by said referee, and no appeal from said order was taken by said plaintiff.

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8. That payment by the liquidator of interest on allowed and paid claims and payment of claims and interest allowed in and by the order of this Court dated March 13, 1936 confirming the report of the referee has been withheld because of the restraining provisions contained in said order pending final determination of an action to be thereafter instituted by the United States of America, the plaintiff herein, with all convenient speed.

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9. That the Superintendent of Insurance of the State of New York has been ordered and directed by the Court of Appeals of the State of New York, in its decision aforesaid (255 N. Y. 415), and the order on remittitur of said decision made by this Court dated June 16, 1931 as resettled by an order dated July 13, 1931, the order of this Court dated May 13, 1932 confirming the Third Report, Audit

Answer of Defendant Louis H. Pink, Superintendent of Insurance, Read in Support of Motion.

and Petition, the order of this Court confirming the Fourth Report, Audit and Petition dated December 13, 1933, as well as by the order of March 13, 1936 confirming the report of the referee and other orders of this Court entered since February 10, 1931, to dispose of and pay the surplus assets in his possession to claimants and other parties as in said decision and orders provided.

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10. That the said decision of the Court of Appeals reported in 255 N. Y. 415 and the order of this Court on the remittitur thereof, completely and with finality directed and fixed disposition of the surplus assets in this proceeding, and said order on remittitur and the subsequent orders of this Court carrying out the disposition of said assets as directed and prescribed by the Court of Appeals are final orders which cannot be disturbed or set aside by the agreement made upon recognition of the present Russian Government on November 16, 1933.

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11. That in and by the agreement or alleged assignment from the Union of Soviet Socialist Republics to the plaintiff referred to in the complaint in this action and particularly paragraph 19 thereof upon which the claim of the plaintiff herein is predicated, it is specifically provided that the government of the Union of Soviet Socialist Republics agrees not to take any steps to enforce any decisions of courts or to initiate any new litigations for the amounts admitted to be due and that may be found to be due it as the successor of prior

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Answer of Defendant Louis H. Pink, Superintendent of Insurance, Read in Support of Motion.

130 governments of Russia, or otherwise, and further agrees not to make any claim with respect to judgments that might be rendered by American courts insofar as they relate to property or rights or interest therein, in which the Union of Soviet Socialist Republics or its nationals may have had or may claim to have an interest, and agrees not to make any claim with respect to acts done or settlements made by or with the government of the United States or public officials of the United States or its nationals relating to property, credits or obligations of any government of Russia or nationals thereof.

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12. That the claimants and parties to the liquidation whose claims have already been allowed and paid but upon whose claims interest has been withheld because of the intervention of the plaintiff herein, as well as those claimants and parties whose claims have been allowed but not paid, have vested rights and interests in the surplus assets in the possession of the liquidator, which rights and interests were vested in them prior to the recognition of the present Russian Government by the United States of America. That to deprive such claimants of their property, rights and interests would violate and be contrary to the Fifth and Fourteenth Amendments of the Constitution of the United States.

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13. That by reason of the matters set out in paragraphs 6, 7, 8, 9, 10 and 11 hereof and the agreement of the plaintiff's assignor in its agreement

Answer of Defendant Louis H. Pink, Superintendent of Insurance, Read in Support of Motion.

and purported assignment to the plaintiff as aforesaid, and the acceptance thereof by the plaintiff, the plaintiff and the plaintiff's assignor waived any claim or claims to the assets in suit in this action and are now in all respects barred and estopped to assert the same.

133

FOR A SECOND SEPARATE, COMPLETE AND DISTINCT DEFENSE TO THE ALLEGED CAUSE OF ACTION STATED IN THE COMPLAINT IN THIS ACTION DEFENDANT ALLEGES:

14. The alleged agreement or assignment referred to in Paragraph 19 of the plaintiff's complaint, if it was in fact intended thereby to assign the assets of the First Russian Insurance Company Established in 1827 held by the Superintendent of Insurance of the State of New York as liquidator of the First Russian Insurance Company Established in 1827, was expressly conditioned upon a final settlement of the claims and counterclaims between the governments of the Union of Soviet Socialist Republics and the United States of America and the claims of their nationals, and on information and belief the negotiations for the settlement of such claims and counterclaims have been terminated without any settlement having been arrived at, and the conditions of the said agreement or assignment have not been complied with and said agreement or assignment is now in all respects null, void and unenforceable.

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Answer of Defendant Louis H. Pink, Superintendent of Insurance, Read in Support of Motion.

136 FOR A THIRD SEPARATE, COMPLETE AND DISTINCT DEFENSE TO THE ALLEGED CAUSE OF ACTION STATED IN THE COMPLAINT IN THIS ACTION DEFENDANT ALLEGES:

137 15. Under and pursuant to various laws, decrees, enactments and orders of the Russian Government, among which are a decree dated October 27, 1931 (Collection of Laws and Orders of the Worker's and Peasant's Government, December 5, 1921, #72, published by the People's Commissariat of Justice), a decree dated December 10, 1921 (Collection of Laws, etc., 1921, #79, Article 684), and a decision of the Supreme Court of the Russian Socialist Federated Soviet Republic rendered on March 11, 1929 (Judicial Practice #6, page 2), the Soviet Law regards the nationalization decrees upon which the plaintiff herein relies as having no effect on property not factually taken into possession or control by the Soviet State prior to May 22, 1922.

FOR A FOURTH SEPARATE, COMPLETE AND DISTINCT DEFENSE TO THE ALLEGED CAUSE OF ACTION STATED IN THE COMPLAINT IN THIS ACTION DEFENDANT ALLEGES:

138 16. The decree of November 18, 1918 (published December 1, 1918) upon which the plaintiff herein bases its alleged title was operative only within Russia. Pursuant to said decree only such assets as were disclosed at the time of their liquidation or remaining on hand after liquidation were to become the property of the Russian Government.

Answer of Defendant Louis H. Pink, Superintendent of Insurance, Read in Support of Motion.

Pursuant to said decree the aforesaid liquidation was to be accomplished not later than April 1, 139
1919.

17. The Soviet law of property regards the law of the place where the property is located as the only law to be applied in determining the ownership of such property. Accordingly, various notes and circulars of the Russian Government have been promulgated, which decree that the nationalization and confiscatory decrees were intended to be solely territorial in effect. Among such circulars and decrees are Circular #329, dated October 23, 1925, 140
of the People's Commissariat for Foreign Affairs; Circular #42, dated April 12, 1922, of the People's Commissariat for Foreign Affairs, and Circular #194, dated September 26, 1923, of the People's Commissariat of Justice of the R. F. S. R., and decision, #124 of the Third Department of the People's Commissariat of Justice interpreting the decree of November 18, 1919, on the annulment of life insurance contracts wherein it was held that "the general annulment of agreements of life insurance does not extend to the territories located without the borders of the U. S. S. R. and particularly to the United States of North America". 141

FOR A FIFTH SEPARATE, COMPLETE AND DISTINCT
DEFENSE TO THE ALLEGED CAUSE OF ACTION STATED
IN THE COMPLAINT IN THIS ACTION DEFENDANT
ALLEGES:

18. The laws, decrees, enactments and orders upon which plaintiff herein bases its alleged title

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142 are confiscatory, and, even if the said laws, decrees, enactments and orders were intended to cover or extend to the assets in the possession of the Superintendent of Insurance of the State of New York they are contrary to the public policy of the United States of America and the State of New York and are unenforceable since they are violative of the Constitutions of the State of New York and the United States of America.

143 19. The penal code of the R. S. F. S. R. (Article 136, Collection of Laws, etc., #15 for 1922, Article 153; and Collection of Laws, etc., for 1927, #80, Article 600, Section 58, Subdivision 1 to 7 thereof), makes it a state crime punishable by forced labor to violate any of the provisions concerning state monopolies. The Soviet decrees upon which plaintiff's alleged title is based are penal decrees and unenforceable here.

FOR A SIXTH SEPARATE, COMPLETE, AND DISTINCT DEFENSE TO THE ALLEGED CAUSE OF ACTION STATED IN THE COMPLAINT IN THIS ACTION DEFENDANT ALLEGES:

144 20. The recognition agreement of November 16, 1933 provides that the United States shall notify the U. S. S. R. of the amounts collected by it by virtue of said assignment. The United States is therefore acting as the collection ~~agency~~ for the U. S. S. R. The United States cannot accept property by assignment or otherwise for any purpose other than governmental (Constitution, Article

Answer of Defendant Louis H. Pink, Superintendent of Insurance, Read in Support of Motion.

Section 81, and the United States is, therefore, barred and foreclosed from asserting any title to the property in the possession of the Superintendent of Insurance of the State of New York. 145

Wherefore, this defendant demands judgment dismissing the complaint of the plaintiff herein, together with the costs and disbursements of this action.

Dated, New York; N. Y., March 24, 1938,

Yours, etc.,

146

JOHN M. DOWNES,

Attorney for Louis H. Pink; Superintendent of Insurance of the State of New York as Liquidator of the Domesticated United States Branch of the First Russian Insurance Company Established in 1827.

Office & P. O. Address,

111 John Street,

Borough of Manhattan,

New York City, N. Y.

(Verified March 24, 1938, by Milton D. Loysen.)

147

**Affidavit of Leon E. Spencer, Read in
Opposition to Motion.**

SUPREME COURT
OF THE STATE OF NEW YORK
NEW YORK COUNTY

148 [SAME TITLE]

STATE OF NEW YORK,
COUNTY OF NEW YORK,
SOUTHERN DISTRICT OF NEW YORK, ss.

149 Leon E. Spencer, being duly sworn, deposes and says that he is an Assistant United States Attorney in and for the Southern District of New York and has charge of the Government's case in the above-entitled action.

That this affidavit is submitted in opposition to that of John M. Downes verified on the 17th day of May, 1939, which seeks the dismissal of the complaint herein. The motion made on behalf of the Superintendent of Insurance as appears from the affidavit of John M. Downes above-referred to seeks the dismissal of the complaint in this action because of a holding by the Court of Appeals of the State of New York in the "Moscow Fire Insurance Company" case. The Court of Appeals decision in the "Moscow Fire Insurance Company" case was made on April 11, 1939. On April 15, 1939, the Government filed a motion for reargument in the Court of Appeals and also made a motion for a stay against any payments out of the fund now and then on deposit with the Bank of New York and Trust Company. The Court of Appeals under date of June 2, 1939, denied the Government's mo-

*Aw davit of Leon E. Spencer, Read in Opposition
to Motion.*

tion for reargument with respect to the decision of the Court of Appeals dated April 11, 1939, and continued the stay against any payment out of the funds of the Moscow Fire Insurance Company pending an application by the Government to the Supreme Court of the United States for certiorari to review the decision of the Court of Appeals dated April 11, 1939.

The Solicitor General of the United States has decided that an application for certiorari will be filed in due time with the United States Supreme Court seeking a review of the decision of the Court of Appeals dated April 11, 1939.

It is therefore respectfully submitted that the decision of the Court of Appeals of the State of New York has not become final and will remain interlocutory until the Supreme Court, finally passes upon the Government's application for certiorari or if certiorari is granted by the Supreme Court, then pending the final decision on certiorari.

It is therefore respectfully submitted that the motion made on behalf of the Superintendent of Insurance for the dismissal of the Government's complaint in the above-entitled action is premature and should be denied or else decision thereon withheld pending the final decision of the Supreme Court in the Moscow Fire Insurance Company case decision in which case the Superintendent of Insurance alleges as his authority for the dismissal of the complaint herein.

LEON E. SPENCER.

Sworn to before me this
6th day of June, 1939.

LEO COHEN

Notary Public, Kings Co. Clk's No. 267
N. Y. Co. Clk's No. 774, Bronx Co. Clk's No. 39.
Commission expires March 30, 1940

151

152

153

**Memorandum Decision of
Justice Aaron J. Levy.**

154

Special Term, Part III

(New York Law Journal, June 23, 1939.)

United States v. Pink—Motion for summary judgment dismissing the complaint is granted (Moscow Fire Ins. Co. v. N. Y. Bank & Trust Co., 280 N. Y., 286). The fact that the Court of Appeals, in the cited case, in denying the motion of the present plaintiff for reargument granted a stay pending an application to the United States Supreme Court for a writ of certiorari does not justify withholding the decision of the present motion until the decision of the latter court. Settle order.

155

156

Affidavit of No Other Opinion.

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

157

Irvin C. Rutter, being duly sworn, deposes and says:

I am a Special Assistant to the Attorney General of the United States, and as such am in charge of this action on behalf of the plaintiff; and I am familiar with the proceedings in this action.

No opinion or memorandum was rendered by the Court in this case, except as appears in the memorandum decision of Justice Aaron J. Levy, printed herein at page 52.

158

IRVIN C. RUTTER.

Sworn to before me this
12th day of March, 1940.

JULIUS ROLNITZKY
Notary Public, Kings County
Kings Co. Clk's No. 293, Reg. No. 453
N. Y. Co. Clk's No. 884, Reg. No. 9R526
Commission expires March 30, 1940

159

Stipulation Waiving Certification.

160 Pursuant to Section 170 of the Civil Practice Act, it is hereby stipulated that the foregoing are true and correct copies of the notice of appeal, order and judgment appealed from, and all papers upon which the Court below acted in making the order and judgment appealed from and the whole thereof now on file in the office of the Clerk of the County of New York, and certification thereof by the Clerk pursuant to Section 616 of the Civil Practice Act, is hereby waived.

Dated: March 12, 1940.

161

JOHN T. CAHILL,
United States Attorney for the
Southern District of New York,
Attorney for United States of
America, Plaintiff-Appellant.

JOHN M. DOWNES,
Attorney for the Superintendent
of Insurance of the State of
New York, Defendant-Appellee.

162

ADDITIONAL PAPERS

to the

COURT OF APPEALS

Notice of Appeal to Court of Appeals.**SUPREME COURT****NEW YORK COUNTY**

163

32347/1937

UNITED STATES OF AMERICA,**Plaintiff,**

—v—

LOUIS H. PARK, Superintendent of Insurance of the
State of New York, and as Liquidator of the
Domesticated United States Branch of the FIRST
RUSSIAN INSURANCE COMPANY, ESTABLISHED
1827, *et al.*

164

Defendants:**SIR:**

PLEASE TAKE NOTICE that pursuant to leave granted by the Appellate Division of the Supreme Court, First Judicial Department, by an order made and entered in the office of the Clerk of that Court on May 31, 1940, and as of right, the plaintiff, United States of America, hereby appeals to the Court of Appeals from each and every part of the judgment of affirmance herein entered in the office of the Clerk of the County of New York on May 18, 1940, pursuant to the order of the Appellate Division, First Judicial Department, entered in the office of the Clerk of that Court on May 17, 1940, which judgment and order unanimously affirmed the order of the Supreme Court of New York County dated

165

Notice of Appeal to Court of Appeals.

and entered in the office of the Clerk of the County of New York on June 29, 1939, and the judgment entered herein in the office of the Clerk of the County of New York on June 30, 1939, which judgment and order directed that the complaint be dismissed upon the merits in favor of the defendant, Louis H. Pink, Superintendent of Insurance of the State of New York, and as Liquidator of the United States Branch of the First Russian Insurance Company, Established in 1827.

Dated: New York, N. Y., June 26, 1940.

JOHN T. CAHILL,

United States Attorney for the Southern District of New York,

Attorney for Plaintiff-Appellant.

To:

JOHN M. DOWNES,

Attorney for Defendant-Respondent,

Louis H. Pink, Superintendent of Insurance of the State of New York and as Liquidator of the Domesticated United States Branch of the First Russian Insurance Company, Established 1827.

Order of Affirmance.

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 17th day of May, 1940.

Present:

HON. FRANCIS MARTIN,

Presiding Justice,

" IRWIN UNTERMAYER,

" EDWARD S. DORE,

" ALBERT COHN,

" JOSEPH M. CALLAHAN,

Justices. 170

8740

UNITED STATES OF AMERICA,

Appellant,

—vs.—

LOUIS H. PINK, Superintendent of Insurance of the State of New York, and as Liquidator of the Domesticated United States Branch of the FIRST RUSSIAN INSURANCE COMPANY, ESTABLISHED IN 1827, impleaded etc.,

171

Respondent.

An appeal having been taken to this Court by the Plaintiff from a judgment of the Supreme Court, New York County, entered on the 30th day of

Order of Affirmance.

June, 1939 and from an order made by said Court entered on the 29th day of June, 1939, granting defendants' motion to dismiss the complaint and for summary judgment, and said appeal having been argued by Mr. Irvin C. Rutter of counsel for the appellant, and by Mr. John M. Downes of counsel for the respondent; and due deliberation having been had thereon,

It is hereby unanimously ordered and adjudged that the judgment and order so appealed from be and the same are hereby, in all things, affirmed; and that the respondent recover of the appellant the costs of this appeal.

173

Enter,

F. M.

174

Judgment of Affirmance.

**SUPREME COURT
OF THE STATE OF NEW YORK
NEW YORK COUNTY**

County Clerk's No. 32347—1937

175

UNITED STATES OF AMERICA,

Plaintiff,

—*against*—

**LOUIS H. PINK, Superintendent of Insurance of the
State of New York, and as Liquidator of the
Domesticated United States Branch of the FIRST
RUSSIAN INSURANCE COMPANY, ESTABLISHED
IN 1827, and others,**

176

Defendants.

The appeal taken by the plaintiff from the order of this Court dated and entered in the office of the Clerk of the County of New York herein on the 29th day of June, 1939 and from the judgment in the above-entitled action entered in the office of the Clerk of the County of New York on the 30th day of June, 1939, having been brought to a hearing and heard at a term of the Appellate Division of the Supreme Court, First Judicial Department, held at the Appellate Division Court House, in the Borough of Manhattan, City, County and State of New York on the 2nd day of May, 1940, and an order of said Appellate Division having been made and entered affirming said judgment and order with costs of

177

Judgment of Affirmance.

178 said appeal to the respondent, Louis H. Pink, Superintendent of Insurance and as Liquidator of the Domesticated United States Branch of the First Russian Insurance Company Established in 1827, all the Justices concurring,

Now, on motion of John M. Downes, Attorney for the respondent, it is hereby

179 **ADJUDGED** that said judgment and order be and the same hereby are in all things affirmed, and that the respondent, Louis H. Pink, Superintendent of Insurance of the State of New York, as Liquidator of the United States Branch of the First Russian Insurance Company, Established in 1827 of 160 Broadway N. Y. C., recover of the appellant, United States of America of Foley Square N. Y. C., the sum of \$73.25 costs of said appeal.

Dated May 18, 1940.

ARCHIBALD R. WATSON,
Clerk.

**Order Granting Leave to Appeal to
the Court of Appeals.**

At a term of the Appellate Division of the Supreme Court held in and for the **181** First Judicial Department in the County of New York, on the 31st day of May, 1940.

P r e s e n t :

HON. FRANCIS MARTIN, *Presiding Justice*,

" IRWIN UNTERMYER,
" EDWARD S. DORE,
" ALBERT COHN,
" JOSEPH M. CALLAHAN,

182

Justices.

No. 15.

UNITED STATES OF AMERICA,

Appellant,

—v—

Louis H. PINK, Superintendent of Insurance of the State of New York, and as Liquidator of the Domesticated United States Branch of the First RUSSIAN INSURANCE COMPANY, ESTABLISHED IN **183** 1827, impleaded etc.,

Respondent.

The above named plaintiff having moved for leave to appeal to the Court of Appeals from the order

*Order Granting Leave to Appeal to
Court of Appeals.*

of this Court entered herein on the 17th day of May, 1840; and from the judgment entered thereon,

184

Now, upon reading and filing the notice of motion, with proof of due service thereof, and the affidavits of Irvin C. Rutter in support of said motion, and the affidavit of John M. Downes in opposition thereto, and after hearing Mr. John T. Cahill for the motion, and Mr. John M. Downes opposed,

It is hereby ordered that the said motion be and the same hereby is granted, and this Court hereby certifies that in its opinion a question of law is involved which ought to be reviewed by the Court of Appeals.

185
Enter,

F. M.

186

**Affidavit of No Opinion by the Appellate
Division.**

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

187

IRVIN C. RUTTER, being duly sworn, deposes and says: I am a Special Assistant to the Attorney General of the United States and of counsel for the plaintiff-appellant in this action and I am familiar with the proceedings herein.

No opinion was rendered by the Appellate Division, First Department.

IRVIN C. RUTTER.

Sworn to before me this
1st day of August, 1940.

188

JULIUS ROLNITZKY,
Notary Public, Kings County,
Kings Co. Clk's No. 105, Reg. No. 2126,
N. Y. Co. Clk's No. 256, Reg. No. 2R170,
Commission expires March 30, 1942.

189

**Stipulation Waiving Certification of
Record to Court of Appeals.**

It is hereby stipulated and agreed by and between
the attorneys for the respective parties hereto
190 that the foregoing consists of a true and correct
copy of the record on appeal to the Appellate Division, First Department, the order of affirmance, the
judgment of affirmance, and the notice of appeal to
the Court of Appeals, all of which are on file with
the Clerk of the Court of the County of New York,
and the order of the Appellate Division, First Department, granting leave to appeal to the Court of
Appeals, which is on file with the Clerk of said
court.

Certification of all of the foregoing papers is
191 hereby waived.

Dated: New York, N. Y., August 1st, 1940.

J
JOHN T. CAHILL,
United States Attorney for the
Southern District of New York,
Attorney for Appellant.

JOHN M. DOWNES,
Attorney for Respondent.

COURT OF APPEALS

STATE OF NEW YORK, ss:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 31st day of December, in the year of our Lord one thousand nine hundred and forty, before the Judges of said Court.

Witness:

The Hon. IRVING LEHMAN,
Chief Judge, Presiding.

JOHN LUDDEN,
Clerk.

Remittitur

December 31, 1940.

UNITED STATES OF AMERICA, APPELLANT

vs.

LOUIS H. PINK, SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, AND AS LIQUIDATOR OF THE DOMESTICATED UNITED STATES BRANCH OF THE FIRST RUSSIAN INSURANCE COMPANY, ETC., IMPLD. & C., RESPONDENT

Be it remembered, that on the 1st day of October, in the year of our Lord one thousand nine hundred and forty United States of America, the appellant in this cause, came here unto the Court of Appeals; by John T. Cahill, United States Attorney for the Southern District of New York, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department. And Louis H. Pink, Superintendent of Insurance of the State of New York, and as Liquidator etc., the respondent, in said cause, afterwards appeared in said Court of Appeals by John M. Downes, his attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, the said Court of Appeals having heard this cause argued by Mr. Irvin C. Rutter, of counsel for the appellant; and by Mr. John M. Downes, of counsel for the respondent; briefs filed by amici curiae; and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be

and the same hereby is affirmed, with costs. And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be affirmed, with costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, etc.

(Sgd.) JOHN LUDDEN,
*Clerk of the Court of Appeals
of the State of New York*

COURT OF APPEALS.

Clerk's Office, Albany, December 31, 1940.

I, hereby certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

[SEAL]

(Sgd.) JOHN LUDDEN, Clerk.

At a Special Term, Part II, of the Supreme Court of the State of New York, held in and for the County of New York, at the County Courthouse in the Borough of Manhattan, City, County and State of New York, on the 6th day of January 1941.

Present: Hon. PHILIP J. McCOOK, Justice.

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

LOUIS H. PINK, SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, AND AS LIQUIDATOR OF THE DOMESTICATED UNITED STATES BRANCH OF THE FIRST RUSSIAN INSURANCE COMPANY, ESTABLISHED IN 1827, DEFENDANT-RESPONDENT; VICTOR YERMAKOFF, AND OTHERS, DEFENDANTS

The above-named defendant having appealed to the Court of Appeals from the judgment of affirmance of the Appellate Division of the Supreme Court for the First Judicial Department entered in the office of the Clerk of the County of New York on May 8, 1940, pursuant to the order of said Appellate Division entered in the office of the Clerk of that Court on May 17, 1940, which judgment and order unanimously affirmed

the order of the Supreme Court of New York County dated and entered in the office of the Clerk of the County of New York on June 29, 1939, and the judgment entered herein in the office of the Clerk of the County of New York on June 30, 1939, which judgment and order directed that the complaint herein be dismissed upon the merits in favor of the defendant Louis H. Pink, Superintendent of Insurance of the State of New York, as Liquidator of the United States Branch of the First Russian Insurance Company, Established in 1827; and the Court of Appeals having heard said appeal and ordered and adjudged that the judgment and order so appealed from be affirmed with costs; and the record remitted from that Court having been filed, Now on motion of John M. Downes, Attorney for Louis H. Pink, Superintendent of Insurance of the State of New York, and as Liquidator of the Domesticated United States Branch of the First Russian Insurance Company, Established in 1827, the defendant-respondent herein, it is

Ordered that the said judgment of the Court of Appeals be and the same hereby is made the judgment of this Court; and that the judgment entered herein on the 18th day of May 1940 and said order of the Appellate Division entered herein on May 17, 1940, be and the same hereby are affirmed, and that the judgment of this Court be entered herein affirming said judgment and order, with costs of said appeal against the plaintiff to be taxed.

Enter,

(Sgd.) P. J. Mc. C.
J. S. C.

Supreme Court of the State of New York, New York County

UNITED STATES OF AMERICA, PLAINTIFF

LOUIS H. PINK, SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, AND AS LIQUIDATOR OF THE DOMESTICATED UNITED STATES BRANCH OF THE FIRST RUSSIAN INSURANCE COMPANY, ESTABLISHED IN 1827, DEFENDANT, VICTOR YERMALOFF, AND OTHERS, DEFENDANTS

The appeal taken by the plaintiff from the order of the Appellate Division of this Court entered in this action on the 17th day of May 1940, and the judgment of affirmance entered pursuant thereto in this action on the 18th day of May 1940, which said order and judgment affirmed the order of this Court entered herein on the 29th day of June, 1939, and the judgment of this Court entered pursuant to said last mentioned order on

the 30th day of June 1939, and the Court of Appeals having heard said appeals and ordered and adjudged that the judgment and order so appealed from be affirmed and judgment rendered for the plaintiff, with costs, and the record remitted from that Court, having been filed, and an order having been entered thereon making the judgment of the Court of Appeals, the judgment of this Court, and directing the entry of a judgment of affirmance herein with costs of said appeal against the defendant, to be taxed.

Now, on motion of John M. Downes, attorney for Louis H. Pink, Superintendent of Insurance of the State of New York and as Liquidator of the First Russian Insurance Company, established in 1827, the defendant-respondent on said appeal, it is

Adjudged, that the order entered in this action on May 17th, 1940, and the judgment entered herein pursuant thereto on the 18th day of May 1940, be and the same hereby are affirmed;

And it is further adjudged, that the defendant, Louis H. Pink, Superintendent of Insurance of the State of New York, and as Liquidator of the First Russian Insurance Company, established in 1927, 160 Bway., N. Y. C., recover of the plaintiff, United States of America, Foley Square, N. Y. C., the sum of \$104.71, the amount of his costs herein as taxed, and that he have execution against said plaintiff therefor.

Dated, New York, January 7, 1941.

(Signed) ARCHIBALD R. WATSON,

Clerk.

Supreme Court of the State of New York, New York County

UNITED STATES OF AMERICA, PLAINTIFF.

v/s.

LOUIS H. PINK, SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, AND AS LIQUIDATOR OF THE DOMESTICATED UNITED STATES BRANCH OF THE FIRST RUSSIAN INSURANCE COMPANY, ESTABLISHED IN 1827, DEFENDANT, VICTOR YERMALOFF, AND OTHERS, DEFENDANTS

I, Archibald R. Watson, Clerk of the Supreme Court of the State of New York, County of New York, and Clerk of the County of New York, do hereby certify that the foregoing consists of a true, full, correct, and complete copy of the printed record on appeal to the Court of Appeals of the State of New York in the above-entitled action upon which the said Court of Appeals acted and which has been certified to this Court

by the said Court of Appeals with the remittitur of the said Court of Appeals, and a true, full, correct, and complete copy of the following papers, to wit: The remittitur and order of the Court of Appeals; the order on remittitur from the Court of Appeals; the judgment on remittitur from the Court of Appeals; all of which are on file in this office.

In witness whereof I have hereunto set my hand and affixed my seal the 10th day of February 1941.

[SEAL]

ARCHIBALD R. WATSON,

Archibald R. Watson,

Clerk.

State of New York—In Court of Appeals

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany, on the seventh day of January A. D. 1941.

Present, Hon. IRVING LEHMAN, Chief Judge, Presiding.

UNITED STATES OF AMERICA, APPELLANT

v/s.

LOUIS H. PINK, SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, AND AS LIQUIDATOR OF THE DOMESTICATED UNITED STATES BRANCH OF THE FIRST RUSSIAN INSURANCE COMPANY, ESTABLISHED IN 1827, RESPONDENT, VICTOR YERMALOFF, AND OTHERS, DEFENDANTS

A motion having heretofore been made herein upon the part of the appellant for a stay, papers having been submitted thereon and due deliberation having been thereupon had, it is

Ordered, that the said motion be and the same hereby is granted and the Superintendent of Insurance stayed from paying out or distributing to anyone, pursuant to any order or judgment herein, any part of the funds held by said Superintendent of Insurance, as liquidator of the First Russian Insurance Company, except for necessary liquidation and administration expenses, pending the application by the United States of America to the Supreme Court of the United States for a writ of certiorari to review the decision of this court dated December 31, 1940, and in the event said petition for certiorari is granted, then pending the decision of this cause in the Supreme Court of the United States.

A copy.

[SEAL]

RUFUS KIMBALL,

Deputy Clerk.

STATE OF NEW YORK,

Court of Appeals, State Reporter's Office, ss:

I, Louis J. Rezzemini, Reporter of the Court of Appeals of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of United States v. Pink, decided by the Court of Appeals on the thirty-first day of December 1940, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

In witness whereof, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this 27th day of January 1941.

[SEAL]

LOUIS J. REZZEMINI,

*As Reporter of the Court of Appeals
of the State of New York.*

Attest:

[L. S.] JOHN LUDDEN,
Clerk of the Court of Appeals.

STATE OF NEW YORK,

Court of Appeals.

I, Irving Lehman, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that John Ludden is the Clerk of said court, having custody of the seal of said court and of the decisions, minutes and records thereof, and that Louis J. Rezzemini is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication, by said clerk and said reporter of the annexed copy of the official opinion rendered in the case of United States v. Pink, decided by the said Court of Appeals, on the thirty-first day of December 1940, is in due form and sufficient under the laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of John Ludden, as clerk of said court, appended thereto is the true and genuine signature of said John Ludden, and the signature of Louis J. Rezzemini, as reporter of said court, appended thereto is the true and genuine signature of said Louis J. Rezzemini.

In witness whereof, I have hereunto subscribed my official signature at the Chambers of said court at the Court of Appeals Hall, in the City of Albany and State of New York on

the — day of January in the year one thousand nine hundred and forty-one.

IRVING LEHMAN,

*As Chief Judge of the Court of Appeals
of the State of New York.*

UNITED STATES OF AMERICA, APPELLANT

v.

LOUIS H. PINK, SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, AS LIQUIDATOR OF THE UNITED STATES BRANCH OF THE FIRST RUSSIAN INSURANCE COMPANY, RESPONDENT, IM- PLEADED WITH OTHERS

Decided December 31, 1940

Appeal, by permission, from a judgment of the Appellate Division of the Supreme Court in the first judicial department, entered May 18, 1940, unanimously affirming a judgment in favor of defendant-respondent entered upon an order of Special Term which granted a motion by such defendant for a dismissal of the complaint and for summary judgment.

John T. Cahill, United States Attorney (Irvin C. Rutter, Francis M. Shea, Edward J. Ennis, and Noel Hemmendinger of counsel), for appellant.

Allen W. Dulles and Inzer B. Wyatt for Association of American Creditors of Russia, *amicus curiae*.

John M. Downes and Alfred L. Green for respondent.

Paul C. Whipp for Surviving Directors of First Russian Insurance Company, *amicus curiae*.

Albert G. Avery for Frederick H. Cattley et al., *amicus curiae*.

Borris M. Komar for George Brussendorff et al., *amicus curiae*.

Samson Selig, Abraham J. Multer and William F. Roche for Andrew Ditmars et al., *amicus curiae*.

Per Curiam. The judgment appealed from is in accord with the decision of this court in *Moscow Fire Ins. Co. v. Bank of New York* (280 N. Y. 286; affd., without opinion by an equally divided court, 309 U. S. 624; rehearing denied, 309 U. S. 697). Three of the judges of this court concurred in a forceful opinion dissenting from the court's decision in that case, but the decision left open no question which has been argued upon this appeal. We are agreed that without again considering such questions this court should, in determining title to assets of First Russian Insurance Company, deposited in this State, apply in this case

the same rules of law which the court applied in the earliest case in determining title to the assets of Moscow Fire Insurance Company deposited here.

The judgment should be affirmed, with costs.

LEHRMAN, Ch. J., LOUGHAN, FINCH, RIPPEY, SEARS, LEWIS, and CONWAY, J. J., concur.

Judgment affirmed.

Supreme Court of the United States

Order allowing certiorari

Filed May 5, 1941

The petition here for a writ of certiorari to the Supreme Court of the State of New York is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Reed and Mr. Justice Murphy took no part in the consideration and decision of this application.